development of a competitive market.[391] These commenters urge the Commission to continue to enforce these provisions.

200. GTE, McCaw, NTCA, and TRW urge the Commission to forbear from enforcing these sections.[392] TRW contends that although these are important protections for consumers, the Commission does not know at this point which of these provisions, if any, are necessary or appropriate for application to CMRS providers.[393] TRW asserts that the Commission has the right to revisit the matter on a case-by-case basis should abuses occur.[394] McCaw argues that because these sections were enacted to remedy perceived deficiencies in other segments of the telecommunications market, they should not apply to CMRS providers unless there is a documented need.[395]

201. Motorola argues that the Commission should forbear from requiring paging service providers to contribute to recovery of Telecommunications Relay Service (TRS) costs, as identified in Section 225 of the Act. Other non-voice services, such as mobile satellite services, are exempt from both providing and funding TRS because these services are already accessible to the hearing impaired. Motorola and Telocator insist that the same is true of paging, which should be treated similarly. Moreover, asserts Motorola, this result is consistent with the congressional intent that TRS contributions come from providers of interstate telephone voice transmission service, rather than from one-way services such as paging.[396] Watercom argues that Section 225 has virtually no application to Watercom's service, which is rendered to towboats and other similar commercial vessels.[397]

202. GTE, McCaw, and other commenters argue that, in particular, the Commission should forbear from enforcing Section 226 (TOCSIA).[398] McCaw and Telocator insist that Section 226 was adopted in response to specific consumer abuses by segments of the

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[391] NYNEX Comments at 21; Mtel Comments at 17-18. *See also* California Comments at 8; GCI Comments at 4; Pacific Reply Comments at 9; Southwestern Comments at 29; Sprint Comments at 13; TDS Comments at 20.

[392] GTE Comments at 18; GTE Reply Comments at 9; McCaw Comments at 11-12; McCaw Reply Comments at 11-12 n.30; NTCA Comments at 7 (premature to apply these sections to PCS providers); TRW Comments at 32-33.

[393] TRW Comments at 32.

[394] *Id.* at 33. *See also* McCaw Comments at 11.

[395] McCaw Comments at 11.

[396] Motorola Comments at 19; Telocator Comments at 22, *citing* Telocator, Petition for Reconsideration at 3-4, CC Docket No. 90-571 (filed Aug. 25, 1993).

[397] Watercom Comments at 9-10; Watercom Reply Comments at 2. *See also* MMR Reply Comments at 8.

[398] GTE Comments at 18-19; McCaw Comments at 5-6. *See also* In-Flight Comments at 5-6; Motorola Comments at 19; PTC-C Comments at 2-11; TDS Reply Comments at 6-7; Telocator Comments at 21; Telocator Reply Comments at 12; TRW Comments at 32-33; TRW Reply Comments at 23; Watercom Comments at 10-12; Watercom Reply Comments at 2. *See also* MMR Reply Comments at 8-9.

telecommunications industry other than providers of mobile services.[399] GTE contends that forbearance is justified under revised Section 332.[400] Specifically, GTE asserts that enforcement of TOCSIA is not necessary to ensure reasonable charges and practices for mobile public phone services since providers of these services already are subject to the non-discrimination requirements of Section 202 of the Act. Moreover, argues GTE, mobile carriers providing interstate service to which TOCSIA might arguably apply are non-dominant and, therefore, presumptively lack the market power to engage in unreasonably discriminatory conduct. In addition, the economic interest of the service provider lies in maximizing demand for its offering in order to build market share. Unreasonable rates or practices would deter consumers from using its service and lower revenues.[401]

203. GTE and PTC-C also aver that enforcement of TOCSIA with respect to mobile phone service is not necessary to protect consumers.[402] GTE contends that the legislative history reveals that when Congress considered TOCSIA, there was no evidence in the record of consumer abuses stemming from public mobile phone service.[403] Further, asserts GTE, the Commission has yet to receive a complaint alleging operator service provider-type abuses by a mobile service provider.[404] In fact, argues GTE, providers of public mobile phone services generally publish the rates and conditions relating to those services, as well as numbers that the user can dial to obtain additional information before incurring any charges, and traditionally have not blocked access to alternative long distance carriers. Thus, according to GTE, application of TOCSIA is not necessary.[405] Finally, GTE contends that waiver of TOCSIA is entirely consistent with the public interest since compliance with that statute would often be impossible or produce absurd results.[406]

204. Coastel, In-Flight, PTC, and Watercom argue that the Commission should forbear from applying TOCSIA to their particular type of service, alleging that compliance would impose an undue hardship upon them.[407] These commenters also assert that the Common

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[399] McCaw Comments at 5; Telocator Comments at 21; Telocator Reply Comments at 12 (tariff regulation in a competitive market is unnecessary and actually harmful to the public interest).

[400] GTE Comments at 18. *See also* In-Flight Comments at 5-6.

[401] GTE Comments at 18.

[402] *Id.*; PTC-C Comments at 5-6.

[403] GTE Comments at 18.

[404] *Id.* at 18-19. *See also* PTC-C Comments at 7.

[405] GTE Comments at 19. *See also* Motorola Comments at 19.

[406] GTE Comments at 19, *citing* Petition for Declaratory Ruling That GTE Airphone, GTE Railphone, and GTE Mobilnet Are Not Subject to TOCSIA, MSD-92-14, Declaratory Ruling, DA 93-1022, 8 FCC Rcd 6171 (Com.Car.Bur. 1993)(*TOCSIA Declaratory Ruling*), *recon. pending*, GTE, Petition for Reconsideration or Waiver at 7-9 (filed Sept. 27, 1993) (asserting that many concepts underlying TOCSIA, such as "local," "toll," and "distance-sensitivity," often do not apply in the case of mobile phone services and landline operator services).

[407] Coastel Reply Comments, *passim*; In-Flight Comments at 5; In-Flight Reply Comments at 2 (it would be unlawful for the Commission to require compliance with Section 226); PTC-C Comments, *passim*; Watercom Comments at 11. Coastel is one of the cellular licensees for the Gulf of Mexico. In-Flight provides air-to-ground service. PTC provides cellular phones for rental cars. Watercom provides maritime common carrier service along the Mississippi, Illinois, and Ohio Rivers, and the Gulf

Carrier Bureau erred when it determined that they are aggregators, as defined in TOCSIA, and therefore subject to the requirements of Section 226.[407] In-Flight urges the Commission to reverse the Bureau's decision.[409] In-Flight, PTC, and Watercom also argue that compliance with TOCSIA is difficult, illogical, and unnecessary to meet any of the three objectives set forth in Section 332(c)(1) of the Act.[410] In-Flight asserts that imposing the equal access requirements of TOCSIA would be beyond the scope of this proceeding.[411]

(2) *Discussion*

205. The commenters, with the exceptions described above, support the continued enforcement of these sections. We conclude that the public interest will not be served if the Commission forbears from enforcing Sections 223, 225, 226, 227, and 228.

206. Section 223 prohibits individuals from placing obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications. Section 223 also regulates "indecent" telephone communications involving children and restricts the access of minors to those services commonly referred to as "Dial-A-Porn," including providing for the assessment of fines of up to $50,000 per violation.[412] Those commenters opposing the enforcement of this section of Title II do not offer any evidence to show that forbearance would meet the test found in Section 332(c)(1)(A). The presence of competition will not protect consumers from the types of activities regulated here. The policy considerations that supported the statute's adoption still exist and there is no reason why CMRS operators should not be required to comply.

207. One of the mandates of the Americans with Disabilities Act of 1990 (ADA), is that the Commission ensure that interstate and intrastate telecommunications relay services[413] are available to the extent possible and in the most efficient manner to individuals in the United States with hearing and speech disabilities. Accordingly, the Commission has required all

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Intracoastal Waterway. These commenters make arguments in support of forbearance for their particular services, not for commercial mobile services generally.

[408] Coastel Reply Comments at 2-3; In-Flight Comments at 5-6; PTC-C Comments at 3, *citing* S. Rep. No. 439, 101st Cong., 2d Sess. at 1 (1990) (legislative history does not list public mobile telephones, so Congress did not intend to include public mobile telephones in its definition of "aggregator"); Watercom Comments at 11.

[409] In-Flight Comments at 5, *citing TOCSIA Declaratory Ruling*. In-Flight notes that the Common Carrier Bureau is presently considering a petition for reconsideration of the Declaratory Ruling which requests reversal of the Bureau's finding that an air-ground licensee is an "aggregator." *Id.*, *citing TOCSIA Declaratory Ruling*, GTE, Petition for Reconsideration or Waiver (filed Sept. 27, 1993).

[410] In-Flight Comments at 5-6, *citing* its comments in the pending *TOCSIA Declaratory Ruling* reconsideration proceeding; PTC Comments at 3-9; Watercom Comments at 10-11. Coastel alleges that if it is forced to comply with the requirements of TOCSIA, it and the other Gulf of Mexico licensee might be forced out of business. Coastel Reply Comments at 5-6.

[411] In-Flight Reply Comments at 1.

[412] *See* Communications Act, § 223(b), 47 U.S.C. § 223(b).

[413] Telecommunications relay service (TRS) allows people with hearing or speech disabilities (or both) to use the telephone.

interstate service providers (other than one-way paging services) to provide TRS.[414] Last year the Commission amended its rules to require that interstate TRS costs be recovered by charges assessed on all interstate telecommunications service providers based on their relative share of gross interstate revenues for telecommunications services.[415]

208. TRS promotes consumer access to the public switched network. Competition does not necessarily induce CMRS providers to make this service available. We do not find any justification, and no commenter has supplied adequate justification, for not applying Section 225 to CMRS providers.[416] Those commenters supporting forbearance failed to provide the information required by Section 332(c)(1)(A) of the Act. The issue of which carriers should contribute to the TRS fund is beyond the scope of this proceeding.

209. In October 1990, Congress enacted TOCSIA,[417] to protect consumers making interstate operator services calls from pay telephones, and other public telephones, against unreasonably high rates and anti-competitive practices.[418] Congress noted that in recent years a number of operator services companies have emerged. These operator service providers (OSPs) compete with local exchange and long distance carriers by providing telephone services to the general public.[419] When a caller places an operator assisted call from a telephone presubscribed to one of these OSPs, the call is routed automatically to that presubscribed OSP. The OSP provides the desired operator services to facilitate completion of the call. Congress had two main objectives in passing TOCSIA. First, Congress wished to ensure that consumers are aware of the identity of the presubscribed operator service provider. Second, Congress wanted to guarantee that callers are able to use the carrier of their choice in placing operator-assisted calls.

210. TOCSIA requires an OSP, *inter alia*, to identify itself to the consumer at the beginning of the call, to permit the consumer to terminate the call at no charge before the call is connected, and to disclose to the consumer, upon request, a quote of its rates and charges for the call, the method of collection, and the method for processing complaints concerning the

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[414] Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Notice of Proposed Rule Making, 5 FCC Rcd 7187 (1990); Report and Order and Request for Comment, 6 FCC Rcd 4657, 4660 (para. 17) (1991) (*TRS Order*); Order on Reconsideration, Second Report and Order and Further Notice of Proposed Rule Making, 8 FCC Rcd 1802 (1993) (*TRS II*); Third Report and Order, 8 FCC Rcd 5300 (1993) (*TRS III*).

[415] *See TRS III*, 8 FCC Rcd at 5303. *See also TRS II* at Appendix D, Section 64.604(c)(4)(iii)(a) of the Commission's Rules, 47 C.F.R. § 64.604(c)(4)(iii)(a).

[416] We note, however, that in a recent *ex parte* presentation, Nextel argues that compliance with the technical requirements of Section 225 is not easily achieved. *See* Nextel *Ex Parte* Letter, from R. Foosaner to G. Vaughan, at 3, Jan. 13, 1994. Section 225 requires compliance "to the extent possible," so presumably if Nextel demonstrates that compliance is not possible, it could request permission from the Commission not to comply with the provisions of Section 225. *See also* Section 64.604(a)(3) of the Commission's Rules, 47 C.F.R. § 64.604(a)(3).

[417] Communications Act, § 226, 47 U.S.C. § 226.

[418] S. Rep. No. 439. 101st Cong., 2d Sess. at 1 (1990). "Operator services" include collect or person-to-person calls, calls billed to a third number, and calls billed to a calling card or credit card. These services may be provided by an automated device as well as by a live operator. *Id.*

[419] *See id.* at 2.

charges and collection practices.[420] Aggregators are required to post on or near the phone, the name, address, and toll-free telephone number of the OSP.[421]

211. No commenter has demonstrated how forbearing from applying TOCSIA to CMRS providers who are also either OSPs or aggregators would be consistent with the public interest. The chief objectives of TOCSIA are to protect consumers from unfair or deceptive practices by OSPs and to ensure that consumers have the opportunity to make informed choices in making such calls.[422] The informational tariff filings required under TOCSIA are much less detailed than those required pursuant to Section 203. Therefore, we will not forbear from requiring CMRS providers to comply with Section 226 if it is applicable to them.[423]

212. Section 227 lists restrictions on the use of auto-dialing equipment, and limits the ability of telemarketers to harass consumers who do not seek their services. Congress enacted this provision in order to protect residential telephone subscribers' privacy by banning the use of automated or prerecorded telephone calls except when the receiving party consents, or in the case of an emergency.[424] Most commenters agree that application of this section to CMRS providers and calls placed over their networks will offer a significant protection for consumers. Competition has little relevance in deciding whether to use auto-dialing equipment in a marketing effort. Those commenters that urge forbearance do not provide sufficient information to satisfy the forbearance test in Section 332(c)(1)(A). Therefore, we will not forbear from enforcing Section 227.[425]

213. Section 228 regulates offerings of pay-per-call services. Section 228 requires carriers, *inter alia*, to maintain lists of information providers (IPs) to whom they assign a telephone number, to provide a short description of the services the IPs offer, and a statement of the cost per minute or the total cost for each service.[426] Those commenters asserting that the Commission should forbear from enforcing Section 228 do not provide the information required by Section 332(c)(1)(A) to justify forbearance. Further, enforcement of this section, while not imposing any unreasonable burden or cost on CMRS providers, provides an important consumer protection. Consequently, we will not forbear from enforcing Section 228.

5. *Safeguards for Affiliates of Dominant Landline Carriers*

a. Background and Pleadings

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[420] Communications Act, §§ 226(b), 226(c), 47 U.S.C. §§ 226(b), 226(c).

[421] *See id.*, § 226(c)(1)(A), 47 U.S.C. § 226(c)(1)(A).

[422] *See id.*, §§ 226(d)(1)(A), 226(d)(1)(B), 47 U.S.C. §§ 226(d)(1)(A), 226(d)(1)(B).

[423] *See also TOCSIA Declaratory Ruling*. GTE, Watercom, and In-Flight have filed petitions for reconsideration of this decision, or for alternative relief or waiver. The specific claims of these commenters will be addressed in the context of the reconsideration or waiver proceeding referenced herein.

[424] *See* Pub.L. 102-243, § 2.

[425] The constitutionality of portions of Section 227 has been questioned. We note that one court has declared Section 227(b)(1)(B) of the Act unconstitutional. *See* Moser v. FCC, 826 F.Supp. 360 (D.Or. 1993), *appeal pending*. There also is currently pending a lawsuit in which the plaintiff asserts that Section 227(b)(1)(C) is unconstitutional. *See* Destination Ventures v. FCC, Civil No. 93-737 AS (D.Or. 1993).

[426] *See* Communications Act, § 228(c), 47 U.S.C. § 228(c).

214. In the *Notice* we noted that some CMRS providers will be affiliated with dominant common carriers. We remarked that in other circumstances, when we have refrained from regulating certain services provided by affiliates of dominant landline common carriers, we have required compliance with safeguards to ensure that the dominant landline carrier does not act anti-competitively or harm ratepayers of regulated services.[427] We sought comment on whether we should impose any similar requirements on dominant landline common carriers with CMRS affiliates prior to applying forbearance to those affiliates.

215. Cox, Comcast, and Nextel argue that the Commission should place additional safeguards on CMRS affiliates of dominant carriers.[428] Cox and Nextel urge that separate subsidiaries for all LEC commercial mobile radio services activities are essential to minimize opportunities for cross-subsidization and anti-competitive behavior.[429] Nextel argues that the provision of local landline, cellular, intraLATA services, and in some instances interLATA, intrastate telephone service by some Bell Operating Companies creates a potential for anti-competitive discrimination to the detriment of competing CMRS providers.[430] PA PUC argues that the record does not support the removal of the existing structural separation requirements, and states that cellular and PCS should be treated similarly.[431]

216. Bell Atlantic contends that the Commission should scrutinize the accounting rules, but claims that such a review is beyond the scope of this proceeding.[432] In the interim, Bell Atlantic contends that the current accounting rules should apply to all CMRS providers, and the structural separation requirement of Section 22.901 of the Commission's Rules,[433] should be applied to all cellular affiliates of dominant carriers, particularly AT&T.[434] Bell Atlantic argues that, in the interest of parity, the Commission should, at a minimum, add AT&T and other dominant carriers to the list of companies identified in Section 22.901(b).[435] MCI agrees that

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[427] *See* Sections 32.27 and 64.902 of the Commission's Rules, 47 C.F.R. §§ 32.27, 64.902; Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities & Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies To Provide for Nonregulated Activities and To Provide for Transactions Between Telephone Companies and Their Affiliates, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298 (1987), *recon.*, 2 FCC Rcd 6283 (1987), *further recon.*, 3 FCC Rcd 6701 (1988), *aff'd sub nom.* Southwestern Bell v. FCC, 896 F.2d 1978 (D.C.Cir. 1990).

[428] Cox Comments at 6; Comcast Comments at 14; Nextel Comments at 23; Nextel Reply Comments at 11. *See also* GCI Comments at 3; GCI Reply Comments at 3; MMR Reply Comments at 6 (urging the Commission not to forbear from tariff regulation for commercial mobile radio service providers affiliated with dominant carriers, especially any maritime carrier affiliated with a landline carrier). *See also* New York Comments at 10; PA PUC Reply Comments at 16 (arguing for differential treatment for commercial mobile radio service providers affiliated with dominant carriers).

[429] Cox Comments at 6-8; Nextel Comments at 23-24.

[430] Nextel Comments at 23-24.

[431] PA PUC Reply Comments at 16 n.36.

[432] Bell Atlantic Comments at 36.

[433] 47 C.F.R. § 22.901.

[434] Bell Atlantic Comments at 36-38. Bell Atlantic urges that, in the alternative, the Commission should repeal Section 22.901 of the Commission's Rules.

[435] *Id.* at 39.

this issue needs to be addressed, but urges that its resolution be handled in other proceedings or deferred until after the conclusion of the initial phase of this rule making.[436]

217. AMSC, NYNEX, Pacific, and Rochester contend that the Commission should not place additional safeguards on CMRS affiliates of dominant carriers.[437] AMSC asserts that the decision to place any safeguards on these carriers should be made on a case-by-case basis, with a particular focus on the market power of the CMRS provider and the potential for abuse that may arise from its relationship with the dominant carrier.[438] NYNEX and Pacific assert that the Commission should follow its approach in the PCS proceeding, in which the Commission rejected the imposition of additional cost accounting or separate subsidiary rules on LECs that provide PCS services.[439] NYNEX also argues that Nextel's proposal is self-serving, with the intent to protect its wide-area SMR services from competition.[440] OPASTCO contends that such regulatory burdens would curb the development of commercial mobile radio services in areas served by small and rural companies, noting that no additional burdens were placed on LECs that provide PCS.[441]

b. Discussion

218. In the *Broadband PCS Order* the Commission decided to impose accounting safeguards, but not structural separation, for PCS providers affiliated with local exchange carriers, including the Bell Operating Companies.[442] These rules require separation of costs incurred by a local exchange carrier from those incurred by its non-regulated affiliates, and accounting for local exchange carrier transactions with affiliates.[443] These safeguards are necessary because they help to ensure that costs of non-regulated affiliates are not passed to and included as costs of the local exchange carrier. For the same reason we will apply to all CMRS providers with local exchange carrier affiliates the same accounting safeguards that were adopted by the Commission in the PCS proceeding. We decline, however, to address the cellular structural separation requirements for the Bell Operating Companies. This issue was not contained in the *Notice* and evaluation of Section 22.901 of the Commission's Rules is an undertaking that would require a separate rule making. Moreover, there is not enough information in the record to evaluate whether we should remove these safeguards.

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[436] MCI Reply Comments at 6. *See also* USTA Reply Comments at 7 (to provide regulatory parity, the Commission should eliminate other regulatory barriers, such as separate subsidiary requirements, currently imposed upon exchange carriers).

[437] AMSC Comments at 4 n.5; NYNEX Comments at 21; Pacific Comments at 17; Pacific Reply Comments at 5, 8; Rochester Comments at 8-9; Rochester Reply Comments at 5. *See also* GTE Reply Comments at 11-12; PRTC Reply Comments at 6-8; Southwestern Reply Comments at 12-15; Sprint Reply Comments at 7; USTA Reply Comments at 6; US West Reply Comments at 16-17.

[438] AMSC Reply Comments at 4 n.5.

[439] NYNEX Comments at 21; Pacific Comments at 17-18, *citing Broadband PCS Order*, 8 FCC Rcd at 7751-52 (para. 126).

[440] NYNEX Reply Comments at 18-19.

[441] OPASTCO Reply Comments at 3-4, *citing Broadband PCS Order*, 8 FCC Rcd at 7751-52 (para. 126).

[442] *Broadband PCS Order*, 8 FCC Rcd at 7751-52 (para. 126).

[443] *See* Part 32 and Part 64 of the Commission's Rules, 47 C.F.R. Parts 32, 64.

219. The issues raised by commenters regarding accounting, structural separation, and other safeguards address important questions with regard to steps that should be taken to promote a competitive commercial mobile radio services environment in which the various market participants, including both established service providers and new entrants, and including both large and small carriers, have a fair opportunity to compete for new customers and in the development of new services. We believe that the Commission can play a positive role in fostering this competitive environment by examining and establishing the proper mix of safeguards designed to ensure that no CMRS provider gains an unfair competitive advantage resulting from its size or its preexisting position in particular CMRS markets. Thus, the issue of regulatory symmetry in the application of these safeguards is an important one. Although we defer this issue to a separate proceeding, we draw attention here to the fact that we recognize the importance of the decisions we must make in examining these issues.

F. Other Issues

1. *Interconnection Obligations*

a. Background and Pleadings

220. The Budget Act requires the Commission to respond to the request of any person providing commercial mobile radio service, and if the request is reasonable, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of the Communications Act. This provision does not limit or expand the Commission's authority to order interconnection pursuant to the Act.[444] The *Notice* requested comment on the rights of CMRS providers and PMRS licensees to demand interconnection with common carriers. We explained that the Commission has previously addressed the application of its Section 201 authority to require local exchange carriers (LECs) to interconnect with Part 22 licensees. The *Notice* tentatively concluded that there should be no distinction between the interconnection rights of Part 22 licensees and those of CMRS providers. The *Notice* also tentatively concluded that, in the commercial mobile context, LEC provision of interstate and intrastate interconnection and the type of interconnection the LEC provides are inseverable. Therefore, we proposed to preempt state regulation of the right to interconnect and the type of interconnection. We did not propose to preempt state regulation of the interconnection rates charged by LECs.

221. The Commission requested comment on whether we should require CMRS providers to provide interconnection to other mobile service providers. The *Notice* also asked whether, under Section 332(c)(3) of the Act, state regulation of interconnection rates of CMRS providers is preempted. The *Notice* additionally sought comment on whether service providers using PCS spectrum to offer commercial mobile radio service should be subject to equal access obligations like those imposed on LECs.

222. The *Notice* tentatively concluded that the Commission's power to require common carriers to provide interconnection to PMRS providers is unaffected by the Budget Act. The Commission proposed that PCS licensees should have a federally protected right to interconnect with LEC facilities regardless of whether the PCS licensees are classified as commercial or private mobile radio service providers, and that inconsistent state regulation should be preempted. The Commission contended that the new legislation should not affect its original proposal that PCS providers be entitled to obtain interconnection of a type that is reasonable for the PCS system and no less favorable than that offered by the LEC to any other customer or carrier, but we asked for comment on this issue. The *Notice* requested comment on whether LECs should be required to file tariffs specifying interconnection rates applicable to PCS

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[444] Communications Act, § 332(c)(1)(B), 47 U.S.C. § 332(c)(1)(B).

providers. The Commission also indicated that we continue to believe that, with respect to the rates for interconnection, it is unnecessary to preempt state and local regulation at this time.

223. Commenters and reply commenters generally agree that the Commission should require LECs to interconnect with commercial mobile radio service providers in the same manner they interconnect with Part 22 licensees.[445] Several parties, however, argue that the interconnection obligations proposed in the *Notice* are insufficient and have not provided adequate interconnection for cellular carriers.[446] Others reply that these proposals are unnecessary or go beyond the scope of this rule making.[447] Commenters and reply commenters agree with the Commission's tentative conclusion to preempt state regulation of the right to intrastate interconnection and the right to specify the type of interconnection.[448] Most commenters also agree with the Commission's decision not to preempt state regulation of LEC interconnection rates.[449] Several parties, however, urge the Commission to preempt state regulation of LEC interconnection rates.[450]

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[445] Century Comments at 7; GTE Comments at 21; McCaw Comments at 31; MCI Comments at 2, 7; Motorola Comments at 20-21; NABER Comments at 17; NYNEX Reply Comments at 19-20; Rig Comments at 5-6; TDS Reply Comments at 4; Telocator Comments at 23; USTA Comments at 11; US West Comments at 31-32; Vanguard Comments at 18; *see also* Ameritech Comments at 10; Pactel Comments at 17; PageNet Comments at 25-26; RMD Comments at 8. *But see* BellSouth Comments at 35 (claiming that the Commission is obligated under Section 201 to evaluate each case on its merits).

[446] Comcast Comments at 6-10; Cox Comments at 2-4; GCI Comments at 4-5; MCI Comments at 3; Nextel Reply Comments at 14-15; *see also* Radiofone Reply Comments at 7 (urging that commercial paging services must receive interconnection of the same quality and on the same terms provided by the LECs to their own paging subsidiaries); Rig Comments at 6 & n.3 (describing dispute over whether Southwestern will provide direct inward dial service to Rig).

[447] Bell Atlantic Reply Comments at 11 n.16; BellSouth Reply Comments at 1-2; Pacific Reply Comments at 3; Rochester Reply Comments at 6; US West Reply Comments at 17-18; USTA Reply Comments at 7-8.

[448] AMTA Comments at 21; Comcast Comments at 11 n.13; Cox Comments at 2 n.3; CTIA Comments at 40; GCI Comments at 5; McCaw Comments at 32-33; NTCA Comments at 7; Nextel Comments at 24; NYNEX Reply Comments at 20-21; PageNet Comments at 26-29; Pacific Comments at 18; Pactel Paging Reply Comments at 5; Southwestern Comments at 29; TDS Reply Comments at 4; TRW Comments at 34-35; US West Comments at 30; Vanguard Comments at 18-19. *But see* California Comments at 9-10; NARUC Comments at 21 (suggesting that the Commission's preemption proposal is premature); PA PUC Reply Comments at 17-19.

[449] BellSouth Comments at 36; California Comments 10-11; CTIA Comments at 40-41; DC PSC Comments at 10; Nevada Reply Comments at 1-2; PA PUC Reply Comments at 17-18; Pacific Comments at 18; PRTC Reply Comments at 25; Rochester Reply Comments at 6 n.20; TDS Reply Comments at 5; US West Comments at 30; Vanguard Comments at 19.

[450] See GCI Comments at 5 (arguing that a State should be allowed to regulate interconnection rates only if the Commission grants it authority after notice and comment); Nextel Comments at 25-26 (claiming that the Commission has both the legal authority and sufficient justification to preempt State regulation of interconnection rates); PageNet Comments at 28 n.75 (contending that paging carriers may not be well suited for dual interconnection rate regulation because it is impossible to segregate interstate from intrastate calls); TRW Comments at 36 (asserting that the Commission should preempt State regulation of interconnection rates for inherently national or international services such as those provided

224. Commenters disagree over our proposal to require commercial mobile radio service providers to interconnect with other mobile service providers. Some commenters contend that the Commission should impose interconnection obligations on CMRS providers.[451] NCRA urges the Commission to require facilities-based CMRS providers to allow collocation consistent with the Commission's Expanded Interconnection proceeding[452] for local exchange carriers.[453] Many parties, however, argue that commercial mobile radio service providers do not have control over any monopoly, bottleneck facilities, and therefore no need exists to impose upon them any interconnection obligations.[454] In particular, several parties oppose MCI's proposal that CMRS providers give interexchange carriers access to customer information stored in mobile service data bases.[455] Reply commenters also oppose NCRA's proposal that the Commission impose expanded interconnection obligations on CMRS providers.[456] GTE points out that the Commission may defer considering whether commercial mobile radio service providers have an interconnection obligation and, if it appears that demand is not being met, revisit the issue.[457] Commenters also differ regarding the extent of state authority over a CMRS provider's interconnection obligations and interconnection rates. McCaw and Nextel argue that, in the interest of a uniform federal policy for commercial mobile radio service, the Commission should preempt states from imposing interconnection requirements on CMRS providers.[458] CTIA and McCaw contend that the Budget Act specifically preempts states from

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over MSS/RDSS systems).

[451] Ameritech Comments at 10 n.20; Bell Atlantic Comments at 40; GCI Comments at 4; Grand Comments at 2-3; MCI Comments at 10; NCRA Comments at 23; NYNEX Reply Comments at 19-23 ("However, new licensees or developing services should not be permitted to use interconnection as a substitute for the prompt construction and implementation of their own independent networks."); Pacific Comments at 19-20; USTA Comments at 11; US West Comments at 33-34. *But see* TDS Comments at 20 (arguing that the Commission should require commercial mobile service providers to provide interconnection to other mobile service providers only where necessary to assure that the operations of adjacent non-regional systems providing CMRS offerings in the same radio service have a fair opportunity to interconnect to promote regional roaming).

[452] *See* note 489, *infra*.

[453] NCRA Comments at 9-13.

[454] AllCity Comments at 2-3; Arch Comments at 8 n.20; CTIA Comments at 41-42; IVC Partnerships Comments at 2-3; McCaw Comments at 31-32; New Par Comments at 11-12; Nextel Reply Comments at 15; Pactel Comments at 10-11; Pactel Paging Comments at 6 n.13; PageNet Reply Comments at 2; PNC Comments at 4-5; Southwestern Comments at 29-30. *See also* BellSouth Comments at 36; Century Comments at 7; TRW Comments at 36 n.72; Vanguard Comments at 15-17.

[455] Pactel Reply Comments at 15-16; Southwestern Reply Comments at 9-10.

[456] Bell Atlantic Reply Comments at 11; CTIA Reply Comments at 21-22; Pacific Reply Comments at 2-3; Pactel Reply Comments at 14 n.38; Southwestern Reply Comments at 8; TDS Reply Comments at 5-6.

[457] GTE Comments at 22. *See also* Sprint Reply Comments at 7-8.

[458] McCaw Comments at 32-33; Nextel Reply Comments at 15-16. *See also* NCRA Comments at 23 (arguing that the possibility of State regulation must be kept open unless there is a federally mandated right of access on a cost basis to commercial mobile radio service providers); New Par Comments at 12-13 (asserting that if the Commission imposes interconnection obligations on commercial mobile radio service providers, it should preempt State authority to regulate such interconnection).

regulating the rates charged by a CMRS provider, including rates for interconnection.[459] Other parties, however, claim that Congress did not intend to preempt state regulation of the interconnection rates of CMRS providers, only the rates those providers charge to end users.[460]

225. Many parties support the Commission's determination that the Budget Act does not limit the Commission's authority to require common carriers to provide interconnection to private mobile radio service providers.[461] Some parties urge the Commission to clarify or strengthen the rights of private mobile radio service providers.[462] Several paging companies specifically argue that if common carrier paging is reclassified as PMRS, these mobile service providers should not lose their existing interconnection rights.[463] Other commenters and reply commenters argue that PMRS providers should not have the same interconnection rights as common carriers.[464]

226. Commenters also expressed opinions with respect to LEC obligations to interconnect with PCS providers specifically. Many parties support the proposal in the *Notice* that PCS licensees should have a federally protected right to interconnect with LEC facilities regardless of whether the PCS licensees are classified as commercial or private mobile radio service providers.[465] Several commenters urge the Commission to clarify or strengthen the interconnection rights of PCS providers.[466] Commenters agree with our proposal to preempt inconsistent state regulation of PCS interconnection.[467] MCI also supports our proposal not to preempt,

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[459] CTIA Comments at 41; New Par Comments at 13-14.

[460] NARUC Comments at 22-23; New York Comments at 12-14; Vanguard Comments at 19-20.

[461] AMTA Comments at 21; Celpage Comments at 4; RMD Comments at 8; Pagemart Comments at 10-11; PageNet Comments at 25-26.

[462] Motorola Comments at 21; NABER Comments at 17.

[463] Pagemart Comments at 10-11; PageNet Comments at 25-26; *see also* AmP Reply Comments at 4-5; Telocator Reply Comments at 10.

[464] Bell Atlantic Comments at 40-41; GTE Comments at 21-22; MCI Reply Comments at 4-5; US West Comments at 32-33. *See also* GTE Reply Comments at 13 (urging the Commission to defer judgment to allow market forces to take effect first); Nextel Comments at 25 n.44 (arguing that to the extent that private mobile radio service carriers require the same interconnection arrangements as a commercial mobile radio service, they are likely offering a functionally equivalent service and should be classified as a CMRS provider for regulatory purposes).

[465] Celpage Comments at 5; CTP Comments at 2; NCRA Comments at 23-24; Pacific Comments at 20; Pagemart Comments at 19; RMD Comments at 8; Telocator Comments at 23; Time Warner Comments at 7-10; TRW Comments at 35. *But see* MCI Reply Comments at 3-5 (questioning the Commission's authority to grant private carriers the same interconnection rights as commercial mobile radio service providers).

[466] Cox Comments at 3; GCI Comments at 4-5; MCI Comments at 8; Telocator Reply Comments at 10.

[467] CTP Comments at 2; Comcast Comments at 11; MCI Comments at 8; Pagemart Comments at 20; Time Warner Comments at 10.

at this time, state regulation of the rates LECs charge for PCS interconnection.[468] In addition, several parties support the Commission's proposal to require LECs to tariff rates for PCS interconnection.[469]

b. Discussion

227. The *Notice* refers to the right of mobile service providers, particularly PCS providers, to interconnect with LEC facilities. The "right of interconnection" to which the *Notice* refers is the right that flows from the common carrier obligation of LECs "to establish physical connections with other carriers" under Section 201 of the Act.[470] The new provisions of Section 332 do not augment or otherwise affect this obligation of interconnection.

228. Previously, the Commission has required local exchange carriers to provide the type of interconnection reasonably requested by all Part 22 licenses.[471] In the case of cellular carriers, the Commission found that separate interconnection arrangements for interstate and intrastate services are not feasible. Therefore, we concluded that the Commission has plenary jurisdiction over the physical plant used in the interconnection of cellular carriers and we preempted state regulation of interconnection. We found, however, that a LEC's rates for interconnection are severable because the underlying costs of interconnection are segregable. Therefore, we declined to preempt state regulation of a LEC's rates for interconnection. The Commission recognized, however, that the charge for the intrastate component of interconnection may be so high as to effectively preclude interconnection. This would negate the federal decision to permit interconnection, thus potentially warranting our preemption of some aspects of particular intrastate charges.[472]

229. The Commission has allowed LECs to negotiate the terms and conditions of interconnection with cellular carriers. We required these negotiations to be conducted in good faith. The Commission stated, "we expect that tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection."[473] We also preempted any state regulation of the good faith negotiation of the terms and conditions of interconnection between LECs and cellular carriers. The *Notice*, however, requested comment on whether we should require LECs to file tariffs specifying interconnection rates for PCS providers.

230. We see no distinction between a LEC's obligation to offer interconnection to Part 22 licensees and all other CMRS providers, including PCS providers. Therefore, the Commission will require LECs to provide reasonable and fair interconnection for all commercial

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[468] MCI Comments at 9; *see also* CTP Comments at 2 (contending that the Commission does not need to preempt the rate setting of a settlements process as long as the same process is used for independent telephone companies); Nevada Reply Comments at 1-3 (Commission preemption is neither necessary nor permissible). *But see* Pagemart Comments at 20 (urging preemption).

[469] Cox Comments at 5-6; CTP Comments at 1-2; Pagemart Comments at 19; *see also* Comcast Comments at 11-12 (urging the Commission to order LECs to submit sufficient information, such as intrastate interconnection tariffs and all contracts for interconnection and for billing and collection). *But see* Pacific Comments at 20 (opposing a federal tariff requirement).

[470] 47 U.S.C. § 201.

[471] *Interconnection Order*, 2 FCC Rcd at 2913.

[472] *Id.* at 2912.

[473] *Id.* at 2916.

mobile radio services. The Commission finds it is in the public interest to require LECs to provide the type of interconnection reasonably requested by all CMRS providers. The Commission further finds that separate interconnection arrangements for interstate and intrastate commercial mobile radio services are not feasible (*i.e.*, intrastate and interstate interconnection in this context is inseverable) and that state regulation of the right and type of interconnection would negate the important federal purpose of ensuring CMRS interconnection to the interstate network. Therefore, we preempt state and local regulations of the kind of interconnection to which CMRS providers are entitled.[474]

231. With regard to the issue of LEC intrastate interconnection rates, we continue to believe that LEC costs associated with the provision of interconnection for interstate and intrastate cellular services are segregable,[475] and, therefore, we will not preempt state regulation of LEC intrastate interconnection rates applicable to cellular carriers at this time. With regard to paging operations, PageNet and Pagemart argue that we should preempt state regulation of LEC rates charged to paging carriers for interconnection because LEC costs associated with such interconnection are not jurisdictionally segregable.[476] We do not find the arguments presented by PageNet and Pagemart to be persuasive, in light of the fact that our Part 22 Rules already have been applied to LEC interconnection rates for common carrier paging companies, as well as cellular companies, without any complaints.

232. In providing reasonable interconnection to CMRS providers, LECs shall be subject to the following requirements. First, the principle of mutual compensation shall apply, under which LECs shall compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities. Commercial mobile radio service providers, as well, shall be required to provide such compensation to LECs in connection with mobile-originated traffic terminating on LEC facilities. This requirement is in keeping with actions we already have taken with regard to Part 22 providers.[477]

233. Second, we require that LECs shall establish reasonable charges for interstate interconnection provided to commercial mobile radio service licensees. These charges should not vary from charges established by LECs for interconnection provided to other mobile radio service providers. In a complaint proceeding, under Section 208 of the Act, if a complainant shows that a LEC is charging different rates for the same type of interconnection, then the LEC shall bear the burden of demonstrating that any variance in such charges does not constitute an unreasonable discrimination in violation of Section 202(a) of the Act.

234. Third, in determining the type of interconnection that is reasonable for a commercial mobile radio service system, the LEC shall not have authority to deny to a CMRS provider any form of interconnection arrangement that the LEC makes available to any other carrier or other customer, unless the LEC meets its burden of demonstrating that the provision of such interconnection arrangement to the requesting commercial mobile radio service provider either is not technically feasible or is not economically reasonable.

235. Although we requested comment on whether LECs should tariff interconnection rates for PCS providers only, our experience with cellular interconnection issues and our review

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[474] *See Louisiana PSC*, 476 U.S. at 375 n.4; Maryland Pub. Serv. Comm'n v. FCC, 909 F.2d 1510 (D.C. Cir. 1990); California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Illinois Bell Tel. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); *NARUC II*; *Texas PUC*; *NCUC I; NCUC II*.

[475] *See Interconnection Order*, 2 FCC Rcd at 2912.

[476] PageNet Comments at 28 n.75; Pagemart Comments at 12.

[477] *See Interconnection Order*, 2 FCC Rcd at 2915.

of the comments have convinced us that our current system of individually negotiated contracts between LECs and Part 22 providers warrants review and possible revision.[478] We believe that commercial mobile radio service interconnection with the public switched network will be an essential component in the successful establishment and growth of CMRS offerings. From the perspective of customers, the ubiquity of such interconnection arrangements will help facilitate the universal deployment of diverse commercial mobile radio services. From a competitive perspective, the LECs' provision of interconnection to CMRS licensees at reasonable rates, and on reasonable terms and conditions, will ensure that LEC commercial mobile radio service affiliates do not receive any unfair competitive advantage over other providers in the CMRS marketplace. Therefore, we intend to issue a Notice of Proposed Rule Making requesting comment on whether we should require LECs to tariff all interconnection rates.[479]

236. Although we requested comment on whether to impose equal access obligations on PCS providers, the Budget Act does not require us to make such a determination within any statutory deadline. Because this issue also arises in a pending petition for rule making filed by MCI[480] regarding equal access obligations for cellular service providers, we believe it is more efficient to defer any final decision in this area and to address these issues in the context of the MCI petition.

237. The *Notice* also requested comment on whether we should require CMRS providers to provide interconnection to other carriers. As commenters point out, our analysis of this issue must acknowledge that CMRS providers do not have control over bottleneck facilities. In addition, we note that the relatively few complaints the Commission has received concerning cellular carriers' denial of interconnection have involved allegations that cellular carriers refused to allow resellers to interconnect their own facilities with those of cellular carriers under reasonable or non-discriminatory terms and conditions.[481] This situation may change as more competitors enter the CMRS marketplace. In particular, PCS providers may wish to interconnect with cellular facilities, or vice versa, which could also allow for the advantages of interconnecting with a LEC. Also, we do not wish to encourage a situation where most commercial traffic must go through a LEC in order for a subscriber to send a message to a subscriber of another commercial mobile radio service. Because the comments on this issue are so conflicting and the complexities of the issue warrant further examination in the record, we have decided to explore this issue in a Notice of Inquiry. This proceeding will address many of the related issues raised by commenters. For example, MCI raises the issue of whether CMRS providers' interconnection obligations include providing access to mobile location data bases, and providing routing

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[478] *See, e.g.*, Comcast Comments at 6-10; Cox Comments at 2-4; GCI Comments at 4-5; MCI Comments at 3; Rig Comments at 6 & n.3.

[479] This *Notice* may also request comment on whether we should mandate specific tariff rate elements and, if so, how these rate elements should be structured, or whether we should apply alternative requirements on LECs that would ensure reasonable interconnection charges for CMRS providers.

[480] MCI Telecommunications Corp., Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, RM-8012, filed June 2, 1992. We note that the federal court having jurisdiction over the Modification of Final Judgment in the Bell System divestiture proceeding may be asked to determine whether equal access obligations attach to GTE's or the Bell Operating Companies' offering of PCS.

[481] *See, e.g.*, Continental Mobile Tel. Co. v. Chicago SMSA Limited Partnership, File No. E-92-02 (filed Oct. 9, 1991); Cellnet Communications, Inc. v. Detroit SMSA Limited Partnership, File No. 91-95 (filed Mar. 6, 1991).

information to interexchange carriers and other carriers.[482] We agree, however, with commenters who say that the statutory language is clear, that if we do require interconnection by all CMRS providers, the statute preempts state regulation of interconnection rates of CMRS providers.[483]

238. The Notice of Inquiry will also allow the Commission to explore the issue of resale of commercial mobile radio service. NCRA raises the issue of CMRS providers' interconnection obligations to resellers. Several commenters also question whether the Commission should require CMRS providers to allow facilities-based competitors to resell their services. The Commission has a long history of dealing with issues relating to resellers.[484] Our policy has been to prohibit wireline common carriers and cellular carriers from denying service to resellers.[485] In the case of cellular, however, the Commission has allowed a cellular carrier to deny resale to its facilities-based competitor in the same market after that competitor's five-year fill-in period has expired.[486] The Commission reasoned that requiring resale to a facilities-based competitor would discourage cellular licensees from building out their own systems.[487] While these issues are pending before us, we will continue our resale policy with respect to cellular CMRS providers. Our Notice of Inquiry will explore whether we should require all CMRS licensees to provide resale to those who are non-facilities based competitors in the licensees' service area as well as to facilities-based competitors that have held licenses less than five years.

239. In addition, we requested comments on whether we should require local exchange carriers to interconnect with PMRS licensees. Although Section 201(a) of the Act provides the Commission with explicit jurisdiction to require carriers to "establish physical connections with other carriers," and there is no similar provision for interconnection with non-carriers, this does not preclude the Commission's ability to create a right to interconnection for PMRS licensees.[488] In this regard, we conclude that if a complainant shows that a common carrier provides interconnection to CMRS licensees while denying interconnection of the same type and at the same rate to PMRS licensees, the carrier will bear the burden of establishing why this would not constitute denial of a reasonable request for service in violation of Section 201(a),

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[482] *See* MCI Comments at 10. We note that these issues are being explored for dominant carriers in the Commission's Intelligent Network proceeding. *See* Intelligent Networks, CC Docket No. 91-346, Notice of Proposed Rule Making, 8 FCC Rcd 6813 (1993).

[483] Communications Act, § 332(c)(3), 47 U.S.C. § 332(c)(3).

[484] *E.g.*, Resale and Shared Use of Common Carriers Services and Facilities, Docket No. 20097, Report and Order, 60 FCC 2d 261 (1976), *modified on other grounds,* 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied,* 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, CC Docket No. 80-54, Report and Order, 83 FCC 2d 167 (1980); Cellular Communications Systems, CC Docket No. 79-318, Report and Order, 86 FCC 2d 469 (1981), *modified,* 89 FCC 2d 58 (1982), *further modified,* 90 FCC 2d 571 (1982), *appeal dismissed sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

[485] See Commission decisions cited in note 484, *supra.*

[486] Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, Report and Order, 7 FCC Rcd 4006 (1992).

[487] *Id.* at 4007-08.

[488] *See, e.g., Texas PUC,* 886 F.2d 1325, 1327-35 (D.C.Cir. 1989); Fort Mill Tel. Co. v. FCC, 719 F.2d 89, 92 (4th Cir. 1983); *NCUC I,* 537 F.2d at 794-795; Hush-A-Phone Corp. v. United States, 238 F.2d 266, 269 (D.C.Cir. 1956); AT&T, 71 FCC 2d 1, 10-11 (1979).

establishment of an unreasonable condition of service in violation of Section 201(b), and unreasonable discrimination in violation of Section 202(a).[489] We also note that if a service classified as PMRS is provided for profit and made available to the public, interconnection would bring the service within the definition of a CMRS because the definition of interconnected service includes "service for which a request for interconnection is pending pursuant to subsection (c)(1)(B)."[490]

2. *State Petitions To Extend Rate Regulation Authority*

a. Background and Pleadings

240. The statute preempts state and local rate and entry regulation of all commercial mobile radio services, effective August 10, 1994.[491] Under Section 332(c)(3)(B), however, any state that has rate regulation in effect as of June 1, 1993, may petition the Commission to extend that authority based on a showing that (1) "market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory;" or (2) "such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State."[492]

241. Section 332(c)(3)(B) of the revised statute further provides that the Commission must complete all actions on such petitions, including reconsideration, within 12 months of submission. Under Section 332(c)(3)(A) of the revised statute, states may also petition the Commission to initiate rate regulation, based on the criteria noted above, if no such rate regulation has been in effect in the state involved.[493] If the Commission authorizes state rate regulation under either procedure, interested parties may, after a "reasonable time," petition the Commission to suspend the regulations.[494] In the *Notice* we indicated that we intended to establish procedures for the filing of such petitions by the states and interested parties, and we sought comments on what factors should be considered in establishing such procedures.

242. Most of the commenters point out that Section 332(c)(3)(A) is clear as to the congressional intent to preempt State and local rate and entry regulation of commercial mobile

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[489] *See* Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rule Making, 7 FCC Rcd 7369, 7472-73 (1992), *appeal pending sub nom.* Bell Atlantic Corp. v. FCC, No. 92-1619 (D.C. Cir., filed Nov. 25, 1992), *recon.*, 8 FCC Rcd 127 (1992), *further recon.*, 8 FCC Rcd 7341 (1993), Second Report and Order and Third Notice of Proposed Rule Making, 8 FCC Rcd 7374 (1993). We note that the Commission may not forbear regarding the requirements of Sections 201, 202, and 208 of the Act. *See* Communications Act, § 332(c)(1)(A), 47 U.S.C. § 332(c)(1)(A).

[490] Communications Act, § 332(d)(2), 47 U.S.C. § 332(d)(2).

[491] Budget Act, § 6002(c)(2)(A).

[492] Communications Act, § 332(c)(3)(A)-(B), 47 U.S.C. § 332(c)(3)(A)-(B). States must file such petitions prior to August 10, 1994. Communications Act, § 332(c)(3)(B), 47 U.S.C. § 332(c)(3)(B).

[493] Communications Act, § 332(c)(3)(A), 47 U.S.C. § 332(c)(3)(A). The Commission must allow public comment on any such petition and must grant or deny the petition within nine months of submission.

[494] The Commission must allow public comment on any such petition and grant or deny the petition in whole or in part within nine months of the date of submission. Communications Act, § 332(c)(3)(B), 47 U.S.C. § 332(c)(3)(B).

radio services, the narrow circumstances under which the states may be permitted to petition the Commission for authority to continue or initiate CMRS rate regulation, and the criteria upon which they must base their petitions.[495] These commenters believe that the state should bear the burden of proving that rate regulation of commercial mobile radio service providers is justified because of significant market failures. In this regard, GTE urges the Commission to establish a strong presumption against the imposition or continuation of state regulation where there are multiple CMRS providers. Citing the legislative history, it argues that this presumption would further the congressional intent that states not be permitted to regulate commercial mobile radio service, even when provided for basic telephone service, where "several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative providers of this service."[496]

243. Several of the commenters assert that the Commission must adopt specific procedures regarding the threshold showing that the states must make in order to justify rate regulation of commercial mobile radio services.[497] With respect to petitions filed by any state seeking to demonstrate that prevailing market conditions will not protect CMRS subscribers from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory, McCaw contends that the states must demonstrate through empirical evidence that (1) market conditions vary from national norms; (2) CMRS carriers have engaged in anti-competitive behavior which has resulted in harm to consumers; and (3) ad hoc regulation is a better means of protecting consumers than a uniform federal policy.[498]

244. Bell Atlantic argues that, in accordance with Section 332(c)(3), the Commission should adopt procedures that ensure that the petition authorized by Section 332 is in fact filed on behalf of the state itself. Thus, the sponsor of a state petition should demonstrate that it is duly authorized by order or consent of all interested state agencies or departments or, preferably, by state legislation directing the appropriate agency to file the petition.[499] In addition, Bell Atlantic argues that the state petition should identify the specific existing or proposed rules that the state wishes to have imposed on CMRS providers. Such disclosure will allow all interested parties fair notice of the specific rules that the states may apply to them should the petition be granted.[500]

245. Several of the commenters argue that any state regulation that is permitted should be narrowly tailored in terms of scope and duration to remedy the identified market breakdown and to protect consumers. In addition, the commenters argue that states should be permitted to regulate comparable mobile services differently only to the extent that the Commission has established separate regulatory classifications of CMRS providers.[501]

246. A small number of commenters favor the adoption of more liberal procedures that would enable the states to regulate rates. Initially, NARUC and DC PSC contend that the language in the second prong of the statutory showing concerning existing market conditions

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[495] *See, e.g.*, McCaw Comments at 23; CTIA Comments at 38; GTE Comments at 24; Rochester Comments at 10.

[496] GTE Comments at 24-25, *quoting* Conference Report at 493.

[497] *See* Bell Atlantic Comments at 42-43; McCaw Comments at 24-25.

[498] McCaw Comments at 23.

[499] Bell Atlantic Comments at 41-42.

[500] *Id.* at 42-43.

[501] GTE Comments at 25; McCaw Comments at 24; Century Comments at 38.

cannot be read literally because such a showing is the basis for granting the petition under the first prong of the statutory showing.[502] DC PSC notes that the statute specifies that a state need meet only one of the two clauses, and the legislative history does not indicate any intent to limit a state petition based on a claim that the new service was a substitute for an existing service by a requirement that certain market conditions exist.[503]

247. DC PSC proposes that states may file a petition at any time showing: "(1) that 15 percent of basic service subscribers in any telephone exchange area do not have access to basic services offered from any telephone company other than a commercial mobile service licensee, (2) that the rates for basic services offered by the commercial mobile service provider are higher than the rates of the pre-existing landline carrier, or (3) that the commercial mobile service provider has market power in a relevant market."[504] DC PSC recommends that the proceeding should provide for public notice and comment within 30 days and a response within 15 days by the state.[505] According to DC PSC, the Commission should grant the petition if either of the first two tests is met. Otherwise, the Commission should exercise its judgment to evaluate a showing based on the third test. Finally, DC PSC argues that petitions to eliminate state regulations after a state petition is granted should not be permitted for a period of three years. Nevada concurs with DC PSC's proposal.[506] It believes that the use of DC PSC's proposed three-pronged test will allow the Commission to consider the monopoly power of commercial mobile radio service providers within specific market areas, not for the state as a whole.

248. In addition, NARUC, PA PUC, and New York believe that the Commission should not adopt rigid criteria for state petitions filed with the Commission. PA PUC maintains that the criteria adopted in the statute are clear, and given the states' interests involved, the states should be allowed to set forth in their petitions any factors they consider relevant.[507] NCRA proposes that the Commission adopt a review standard that is sufficiently generous to "assure that local and state interests continue to exercise their state statutory duties."[508] Finally, New York argues that the Commission may not preempt states from rate regulating CMRS unless it is satisfied that consumers in the telecommunications market have the ability to choose among CMRS services offered by several entities, and no entity or combination of entities has the ability to control the market prices of these services.[509]

249. Bell Atlantic and Southwestern disagree with DC PSC's proposal.[510] Bell Atlantic emphasizes that the statute and the legislative history make clear that substitution of wireless for wireline service is not sufficient to warrant state rate regulation. Rather, the states must also show that there is inadequate competition in the provision of commercial mobile service. Thus, it rejects DC PSC's proposal to allow state regulation whenever 15 percent of basic service

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[502] DC PSC Comments at 10-11; NARUC Comments at 5-6.

[503] DC PSC Comments at 11.

[504] *Id.* at 12.

[505] *Id.*

[506] Nevada Reply Comments at 4-5. Nevada proposes that the first test suggested by DC PSC be amended slightly to replace the term "telephone exchange area" with the word "area." *Id.* at 5.

[507] PA PUC Reply Comments at 22.

[508] NCRA Comments at 24-25.

[509] New York Comments at 15.

[510] Bell Atlantic Reply Comments at 12-15; Southwestern Reply Comments at 15-17.

subscribers receive such service from CMRS providers. It also rejects DC PSC's proposal to require a grant of a state petition whenever a CMRS provider's rates for basic service are higher than rates for landline service because a comparison of wireless to wireline rates in no way shows that the wireless market is not competitive.[511] Southwestern disagrees with DC PSC's test concerning market power of CMRS providers in a particular CMRS market. It notes that DC PCS does not explain how it would measure market power or whether the states would have to demonstrate that such power had an actual adverse effect on rates.[512] Finally, Bell Atlantic believes that the proposal to impose a three-year period before parties may seek to repeal state regulations is misguided. Those time frames, Bell Atlantic asserts, will depend on such factors as the extent of rate regulation granted, conditions in the state, and how rapidly conditions change.[513]

b. Discussion

250. We believe that Congress, by adopting Section 332(c)(3)(A) of the Act, intended generally to preempt state and local rate and entry regulation of all commercial mobile radio services to ensure that similar services are accorded similar regulatory treatment and to avoid undue regulatory burdens, consistent with the public interest. We also agree with the commenters that Section 332(c)(3) is clear as to the circumstances under which states may be permitted to petition the Commission for authority to regulate rates for CMRS and the criteria upon which they must base their petitions.

251. With respect to all petitions filed by the states under Section 332, we agree with the commenters that any such petition should be acceptable only if the state agency making such filing certifies that it is the duly authorized state agency responsible for the regulation of telecommunications services provided in the state. With respect to petitions seeking to demonstrate that prevailing market conditions will not protect CMRS subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory, we agree with the parties who argue that the states must submit evidence to justify their showings. Any state filing a petition pursuant to Section 332(c)(3) shall have the burden of proof that the state has met the statutory basis for the establishment or continuation of state regulation of rates. In any event, interested parties will be allowed to file comments in response to these petitions within 30 days after public notice of the filing of the petition. The comments should also be based on evidence that can rebut the showing made in the petition. Any interested party may file a reply within 15 days after the time for filing comments in response to the petition has expired. If we determine that the state has failed to meet this burden of proof, then we will deny the petition.

252. We agree with the commenters that a state should have discretion to submit whatever evidence the state believes is persuasive regarding market conditions in the state and the lack of protection for CMRS subscribers in the state. As a general matter, we would consider the following types of evidence, information, and analysis to be pertinent to our examination of market conditions and consumer protection:

(1) The number of CMRS providers in the state, the types of services offered by these providers, and the period of time during which these providers have offered service in the state.

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[511] Bell Atlantic Reply Comments at 12-13.

[512] Southwestern Reply Comments at 17.

[513] Bell Atlantic Reply Comments at 14.

(2) The number of customers of each such provider, and trends in each provider's customer base during the most recent annual period (or other reasonable period if annual data is not available), and annual revenues and rates of return for each such provider.

(3) Rate information for each CMRS provider, including trends in each provider's rates during the most recent annual period (or other reasonable period if annual data is not available).

(4) An assessment of the extent to which services offered by the CMRS providers that the state proposes to regulate are substitutable for services offered by other carriers in the state.

(5) Opportunities for new entrants that could offer competing services, and an analysis of existing barriers to such entry.

(6) Specific allegations of fact (supported by an affidavit of a person or persons with personal knowledge) regarding anti-competitive or discriminatory practices or behavior on the part of CMRS providers in the state.

(7) Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. We will consider especially probative the demonstration of a pattern of such rates, if it also is demonstrated that there is a basis for concluding that such a pattern signifies the inability of the CMRS marketplace in the state to produce reasonable rates through competitive forces.

(8) Information regarding customer satisfaction or dissatisfaction with services offered by CMRS providers, including statistics and other information regarding complaints filed with the state regulatory commission.

In addition to the above-described evidence, information, and analysis that a state may submit in connection with its petition, we conclude that a state must identify and provide a detailed description of the specific existing or proposed rules that it would establish if we were to grant its petition.

253. With respect to petitions filed by any state seeking to demonstrate that state rate regulation is appropriate because the commercial mobile radio service is a replacement for landline telephone exchange service for a substantial portion of the telephone land line exchange service provided within the state, we disagree with DC PSC's argument that the language of the statute cannot be read literally to require states to demonstrate that market conditions are such that customers are not protected from unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory. As the legislative history points out:[514]

> If, however, several companies offer radio service as a means of providing basic service in competition with each other such that consumers can choose among alternative providers of this service, it is not the intention of the conferees that states should be permitted to regulate these competitive services simply because they employ radio as a transmission means.

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[514] Conference Report at 493.

We agree with the other commenters that such petitions must demonstrate both that market conditions are such that they do not protect subscribers adequately from unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, and a substantial portion of the CMRS subscribers in the state or a specified geographic area have no alternative means of obtaining basic telephone service. Thus, we will require the state to provide such information as may be necessary to enable us to determine market conditions prevalent in the state and the range of basic telephone service alternatives available to consumers in the state.

254. Similarly, petitions to suspend state rate regulation must be based on recent empirical data or other significant evidence. Finally, as to what constitutes a "reasonable time" for interested parties to file such petitions with the Commission, we agree with those commenters who state that parties should not be allowed to file such petitions until the state has had an opportunity to implement rate regulation and make the necessary adjustments. We disagree, however, with the DC PSC and others who seek to adopt a period of three years before parties may challenge state regulations. Rather, we believe that an 18-month period should provide the states with adequate time to implement rate regulation. Such a period will afford the states as well as interested parties sufficient opportunity to assess the impact of rate regulation on market conditions and the provision of services to consumers. Therefore, interested parties may not file petitions to suspend state rate regulation until 18 months after such regulatory authority has been granted or extended.

255. In any event, interested parties will be allowed to file comments in response to these petitions (*i.e.*, petitions filed by parties seeking to discontinue state regulation) within 30 days after public notice of the filing of the petition. The comments should also be based on evidence that can rebut the showing made in the petition. Any interested party may file a reply within 15 days after the time for filing comments has expired.

256. We point out that the standards for preemption established in *Louisiana PSC* do not apply to the rules adopted today.[515] In *Louisiana PSC* the Supreme Court found that Section 2(b) of the Communications Act prohibits the Commission from exercising federal jurisdiction with respect to "'charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications services.'"[516] Here, Congress has explicitly amended the Communications Act to preempt state and local rate and entry regulation of commercial mobile radio services without regard to Section 2(b).

257. We emphasize that the rules adopted today do not prohibit the states from regulating other terms and conditions of commercial mobile radio service.[517] Finally, we also note that in those cases where the Commission authorizes the state to regulate rates for commercial mobile radio services, such regulations will be authorized only for the specified period of time we find

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[515] Under *Louisiana PSC*, the Commission may preempt State regulation of intrastate service when it is not possible to separate the interstate and intrastate components of the asserted Commission regulation. *Louisiana PSC*, 476 U.S. at 375 n.4. In construing the "inseparability doctrine" recognized by the Supreme Court in *Louisiana PSC*, federal courts have held that where interstate services are jurisdictionally "mixed" with intrastate services and facilities otherwise regulated by the states, state regulation of the intrastate service that affects interstate service may be preempted where the State regulation thwarts or impedes a valid Federal policy. *See NARUC II*; Illinois Bell Tel. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

[516] *Louisiana PSC*, 476 U.S. at 373, *quoting* Communications Act, § 2(b), 47 U.S.C. § 152(b).

[517] As explained in note 515, *supra*, if we determine that a State's regulation of other terms and conditions of jurisdictionally mixed services thwarts or impedes our federal policy of creating regulatory symmetry, we would have authority under *Louisiana PSC* to preempt such regulation.

to be necessary to ensure that rates will be neither unjust nor unreasonably discriminatory.[518] We will make such determination on a case-by-case basis at the time regulatory authorization is extended to a petitioning state. To the extent that such rulings are made, they will remain in effect until such time as circumstances dictate.

3. *Miscellaneous Issues Raised by Commenters*

258. UTC expresses the view that Commission reorganization is a "necessary element" in carrying out the requirements of the Budget Act, and then goes on to propose a "conversion" plan under which the Commission would be reorganized with regard to our administration of non-broadcast radio services.[519] We did not seek comment on the issue advanced by UTC. While this would not preclude us from reaching the issue,[520] we have chosen not to propose or pursue Commission reorganization in this rule making.

259. NARUC suggests that the Commission and the states should work together to develop methods to monitor mobile services for purposes of determining whether particular services classified as private continue to be entitled to that classification. NARUC also proposes that the Commission and the states should agree to the provision of "complete reciprocal access to information" relevant to mobile service monitoring.[521] We agree with NARUC that state and federal cooperation regarding methods of monitoring the manner in which services are provided by mobile service carriers is reasonable, and we believe that such cooperation can improve monitoring efforts. We further agree with NARUC that state and federal cooperation could address issues such as reciprocal access to mobile service monitoring information. As an initial step toward a cooperative effort, we are committed to meeting informally with NARUC's Communications Committee.

260. Hardy requests that we clarify how the new regulatory scheme would apply to services provided over FM subcarrier channels, including PCS service.[522] We currently allow subsidiary communication services transmitted on a subcarrier within the FM baseband signal. Under our rules, subsidiary communication services that are common carrier services in nature are subject to common carrier regulation.[523] FM subcarriers may offer a variety of services.[524] Any mobile services provided over FM subcarriers that fall within the definition of CMRS and were previously subject to common carrier regulation will now be regulated as CMRS. Mobile services provided over FM subcarriers that meet the definition of CMRS but have been regulated as private radio services, will receive the benefit of our transition rules before becoming subject to CMRS rules. Finally, mobile services provided over FM subcarriers that do not meet the definition of CMRS will be regulated as PMRS.

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[518] Communications Act, § 332(c)(3)(B), 47 U.S.C. § 332(c)(3)(B).

[519] UTC Comments at 19. *See also* AMTA Comments at 16 n.4. UTC also revisits its proposal in its reply comments. UTC Reply Comments at 23-24.

[520] We are not required to give any notice before adopting a rule of Commission organization. 5 U.S.C. § 553(b)(3)(A).

[521] NARUC Comments at 11-12.

[522] Hardy Comments at 1-2.

[523] *See* Section 73.295 of the Commission's Rules, 47 C.F.R. § 73.295.

[524] These services include: functional music, specialized foreign language programs, radio reading services, utility load management, market and financial data and news, paging and calling, traffic control signal switching, bilingual television audio, and point-to-point or multipoint messages. *See id.*

261. RMD asks whether foreign governments and their representatives are eligible end users of SMR services under Section 90.603(c) of the Commission's Rules.[525] SMR systems are considered shared systems pursuant to Section 90.179 of the Commission's Rules, and persons may share stations only on frequencies for which they would be eligible for a separate authorization.[526] Our rules expressly enumerate those classes of persons that may be served by SMR licensees.[527] End user eligibility was limited for some time to persons eligible for licensing under Subparts B, C, D, or E of Part 90 of the Commission's Rules.[528] Wireline telephone common carriers and foreign governments and their representatives were expressly ineligible for licensing, pursuant to Sections 90.603 and 90.115 of the Rules.[529] In 1988, the Commission amended Section 90.603(c) of the Rules to permit SMRs to serve individuals and Federal Government agencies.[530] In other words, we expressly allowed two classes of entities that were previously not permitted to share SMR facilities, to do so. The Commission did not make comparable amendments that would expressly permit foreign governments or their representatives to receive SMR service. Section 90.115 continued to render such entities ineligible under Parts B, C, D, and E of Part 90, and thus they remained ineligible to receive service from SMR licensees. Subsequently, we eliminated individual licensing of SMR end users, and SMR systems therefore achieved some of the freedom in end user selection that is enjoyed by other commercial mobile service providers, such as cellular carriers.[531] Cellular services are not restricted in their ability to serve foreign governments or their representatives, however, whereas we have not amended our Part 90 rules to expand SMR end user eligibility to include foreign governments or their representatives. To facilitate symmetrical regulation of CMRS, therefore, we intend to examine in our Further Notice of Proposed Rule Making on the transition to new regulatory treatment of reclassified mobile services whether such a restriction is still appropriate for SMR services.

IV. SUMMARY OF ACTIONS; TRANSITION RULES

A. SUMMARY OF ACTIONS

1. *Classification of Mobile Licensees; Other Actions*

262. In summarizing the actions we have taken in this Order, we believe that the following points highlight the decisions we have made to implement the objectives of Congress in amending Section 332 of the Act. First, we have given comprehensive scope to the term "mobile service," including within the definition all public mobile services, private land mobile services, and mobile satellite services, and most marine and aviation wireless services.

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[525] *See* RMD Comments at 7 n.8.

[526] 47 C.F.R. § 90.179(a).

[527] *See* 47 C.F.R. § 90.603(c).

[528] *See, e.g.*, Amendment of Part 90 of the Commission's Rules To Release Spectrum in the 806-821/851-866 MHz Bands and To Adopt Rules and Regulations Which Govern Their Use, PR Docket No. 79-191, Second Report and Order, 90 FCC 2d 1281, 1361 (1982) (setting forth previous version of Section 90.603).

[529] 47 C.F.R. §§ 90.603, 90.115.

[530] *See* Amendment of Part 90, Subparts M and S, of the Commission's Rules, PR Docket No. 86-404, Report and Order, 3 FCC Rcd 1838 (1988).

[531] *See* Amendment of Part 90 of the Commission's Rules To Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems, Report and Order, 7 FCC Rcd 5558 (1992).

263. Second, we have defined the term "commercial mobile radio service" in a manner that covers a significant portion of services provided by mobile carriers, because of our conclusion that such a definition best serves the congressional purpose of making mobile services widely available at reasonable rates and on reasonable terms in a competitive marketplace, and is consistent with the broad language of the statute. Our reading of congressional intent finds support in the record.[532] There are three prongs to the CMRS definition: the service must be provided for profit, it must be interconnected to the public switched network, and it must be available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. Under the first element of the definition, we have provided that "for profit" includes any mobile service that is provided with the intent of receiving compensation or monetary gain. In the case of services that are not-for-profit, except for a portion of excess capacity that the licensee offers with the intent of receiving compensation, the service will be treated as for-profit to the extent of such excess capacity activities.

264. Under the second element of the CMRS definition, we have concluded that a mobile service offers interconnected service if it allows subscribers to send or receive messages to or from anywhere on the public switched network. Both direct and indirect interconnection with the PSN satisfy this criterion, as well as the use of store-and-forward technology. In addressing this element of the CMRS definition, we also have given an expansive meaning to the term "public switched network," concluding that the network includes the facilities of common carriers that participate in the North American Numbering Plan and have switching capability.

265. Under the third prong of the definition, we have decided that service made available "to the public" means any service that is offered without restriction on who may receive it. We also have concluded that whether a service is offered to "such classes of eligible users as to be effectively available to a substantial portion of the public" depends on several relevant factors such as the type, nature, and scope of users for whom the service is intended. We have decided not to consider limited system capacity or coverage of small geographic areas as factors in restricting public availability. If a service is provided only for internal use or only to a specified class of eligible users under the Commission's Rules, then the service will not meet the "public availability" prong of the CMRS definition.

266. Third, we have interpreted the term "private mobile radio service" by closely adhering to the statutory definition, and with the aim of advancing the congressional objective of applying a symmetrical regulatory framework to mobile services. We have determined that

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[532] Ameritech, for example, argues that:

> This proceeding was initiated at the direction of Congress to establish a level wireless playing field. At present, common carrier and private radio services that are indistinguishable to the consumer are subject to very different regulation. This caused the House Committee on Energy and Commerce to conclude that "the disparities in the current regulatory scheme could impede the continued growth and development of commercial mobile services." . . . By establishing like regulation of substitutable services, the Commission will promote competition. This, in turn, will enable licensees to better serve the communications needs of all wireless consumers and further allow them to maximize the efficient use of their assigned spectrum. A crucial step toward achieving Congress' goal of regulatory parity is the establishment of equal regulation for cellular and PCS licensees.

Ameritech Comments at 1-2 (citation and footnote omitted).

the statutory language and the legislative history support our conclusion that a mobile service may be classified as PMRS only if it does not fall within the statutory definition of CMRS and is not the functional equivalent of a service that meets the three-part definition of CMRS. Those services that are classified as PMRS will, however, be presumed PMRS unless it is demonstrated that the service is the functional equivalent of CMRS. In applying the functional equivalence test, we have decided to consider a variety of factors, including whether the mobile service at issue is a close substitute for any CMRS offering as evidenced by the cross-price elasticity of demand.

267. Fourth, we have applied the various definitions discussed in the preceding paragraphs to decide how to classify existing private land mobile services and common carrier mobile services. We have decided to classify all existing Government and Public Safety services, including the Special Emergency Radio Service, and all existing Industrial and Land Transportation Services, other than certain licensees in Business Radio Service, as private mobile radio services. We also have classified Automatic Vehicle Monitoring as a private mobile radio service.

268. In the Business Radio Service, which has a broader range of eligible users than other Industrial and Land Transportation services, we have classified Business Radio licensees who provide for-profit interconnected service to third-party users as CMRS. Business Radio licensees who operate not-for-profit internal systems, or who do not offer interconnected service, are classified as private.

269. We also have decided to classify SMR licensees as CMRS if they offer interconnected service to customers. This classification will apply to providers of wide-area SMR service, and to "traditional" SMR systems as well. SMR licensees who do not offer interconnected service, however, are classified as PMRS. In addition, we have concluded that private carrier paging (PCP) services should be classified as CMRS, based on our finding that PCP licensees fit the statutory definition of CMRS. We have classified as PMRS those private paging systems that service the licensee's internal communications needs but do not offer for-profit service to third-party customers. We have classified 220-222 MHz private land mobile systems using the same approach we used for classifying SMR and PCP licensees.

270. With respect to existing common carrier services, we have concluded that cellular services, 800 MHz air-ground services, common carrier paging services, mobile telephone service, improved mobile telephone service, trunked mobile telephone service, 454 MHz air-ground service, and Offshore Radio Service all should be classified as CMRS because they meet the statutory definition. With regard to mobile satellite service, we have concluded that we will exercise our discretion under the statute to determine whether the provision of space segment capacity by satellite licensees and other entities may be treated as common carriage. The provision of both space and earth segment capacity, either by satellite system licensees providing service through, for example, their own licensed earth station, or by earth station licensee resellers directly to users of commercial mobile radio services, will be treated as common carriage. In addition, we have concluded that we should seek further comment on whether we should remove current restrictions that bar CMRS providers from offering dispatch service.

271. Fifth, we have determined that personal communications services (PCS) should be classified presumptively as CMRS. Under this approach a PCS applicant or licensee would be regulated as a CMRS carrier, but would be able to offer private PCS, and be regulated as PMRS, upon making the requisite showing during the application process or subsequently. We conclude that treating PCS as presumptively CMRS most suits the manner in which we have defined PCS, and the four goals that we have established for the service — speed of deployment, universality, competitive delivery, and diversity of services.

272. Sixth, we have decided to exercise our forbearance authority regarding several Title II provisions in order to maximize market competition. We have found that our forbearance